

Article 4: City Employees' Retirement System

Division 10: Miscellaneous Provisions

("Miscellaneous Provisions" added 12-8-1976 by O-11964 N.S.)

§24.1001 Retired Persons

- (a) The City will not pay any person who has retired from City service under this Article for any services rendered as an officer or employee of the City, except as provided below:
- (1) Reinstatement from Disability Retirement. A former City officer or employee who was granted a disability retirement under Division 5 of this Article, but is ordered back to work under section 24.0510, may return to paid City employment after his or her retirement benefits are terminated.
 - (2) Elected Officers. A retired City officer or employee may return to paid City service as an officer elected by the City's electors.
 - (3) Provisional Employees. A retired City officer or employee may be employed for pay in a position that requires special skills or knowledge, as determined by the appropriate appointing authority, for no more than 720 hours per fiscal year. During this employment, the retired officer or employee will continue to receive his or her retirement benefits under this Article, but will not be an active *Member* of the *System*, will not accrue annual leave, and will not be eligible to participate in either of the City's Supplemental Pension Savings Plans.
- (b) The City will not employ any retired person as a provisional employee under section 24.1001(a)(3) if the retired person received unemployment insurance compensation arising out of prior employment as a provisional employee under section 24.1001 (a)(3).

(Amended 5-2-1983 by O-15959 N.S.)

(Renumbered from Section 24.1000 on 4-28-2008 by O-19740 N.S. effective 5-28-2008.)

(Amended 7-19-2016 by O-20680 N.S.; effective 8-18-2016.)

§24.1002 Service Credits Prior to July 1, 1954

Any member of this retirement system who has received service credits for any period of time prior to July 1, 1954, and has paid or is paying the contributions required by Section 24.1303 or Section 24.1308 of this article shall be given full service credits for such period for retirement purposes.

(Renumbered from Section. 24.0313 and amended 12-8-1976 by O-11964 N.S.)

§24.1003 Continuity of Service

The following shall not be considered as breaking the continuity of service:

- (a) A temporary layoff because of an illness or for purposes of economy, suspension or dismissal followed by reinstatement or reemployment within one year.
- (b) A leave of absence followed by reinstatement or reemployment within one year after the termination of the leave of absence.
- (c) A resignation to enter, followed by entrance into, the armed forces of the United States, followed by reemployment by the City within six months after the termination of such service.
- (d) Resignation of a member who has elected in writing to come within the provisions of Sections 24.0206 and 24.0306, followed by reemployment before withdrawal of any accumulated contributions.

(Amended 2-25-1997 by O-18383 N.S.)

(Renumbered from Section 24.1005 on 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)

§24.1004 Compliance with Certain Internal Revenue Code Provisions

- (a) Effective July 1, 1989, the System will satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable. In order to meet those requirements, the System is subject to the following provisions, notwithstanding any other provision of retirement system law. The Board may adopt Rules to implement this section, which are incorporated into this Article as part of the Plan document, including Rules to comply with the Pension Protection Act of 2006.

- (b) Internal Revenue Code Section 401(a)(1), (2): Effective July 1, 1989, the assets of the System, including the assets of retirement accounts, are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the Members and their Beneficiaries and for paying the System's reasonable administrative expenses.
- (c) Internal Revenue Code Section 401(a)(8): Effective July 1, 1989, the System will use forfeitures that arise for any reason, including from termination of employment or death, to reduce employer contributions. Forfeitures may not be applied to increase the benefits of any Member.
- (d) Internal Revenue Code Section 401(a)(9): The System will pay all benefits in accordance with a good faith interpretation of the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code. The System is subject to the following provisions:
 - (1) Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the Member terminates employment. If a Member fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Board will begin distributing the benefit as required by this Article.
 - (2) The Member's entire interest must be distributed over the Member's life or the lives of the Member and a designated Beneficiary, or over a period not extending beyond the life expectancy of the Member or of the Member and a designated Beneficiary. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that section.
 - (3) The life expectancy of a Member, the Member's spouse, the Member's Beneficiary or, on and after January 1, 2005, the Member's Domestic Partner, may not be recalculated after the initial determination for purposes of determining benefits.

- (4) If a Member dies after the required distribution of benefits has begun, the remaining portion of the Member's interest must be distributed at least as rapidly as under the method of distribution before the Member's death.
 - (5) If a Member dies before required distribution of the Member's benefits has begun, the Member's entire interest must be either
 - (A) distributed (in accordance with federal regulations) over the life or life expectancy of the designated Beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the Member's death, or
 - (B) distributed within five years of the Member's death.
 - (6) The amount of an annuity paid to a Member's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of Section 401(a)(9)(G) of the Internal Revenue Code.
 - (7) The death and disability benefits provided by the System are limited by the incidental benefit rule set forth in Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto. As a result, any death or disability benefit payable may not exceed 25% of the cost for all of the Members' benefits received from SDCERS.
- (e) Internal Revenue Code Section 401(a)(17):
- (1) In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided in this section, the annual compensation the *System* takes into account for any purpose, including contributions or benefits, may not exceed the amount allowed by Internal Revenue Code section 401(a)(17).
 - (2) The annual compensation of each *Member* taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 1996, and prior to July 1, 2002, may not exceed \$150,000, as adjusted for cost of living increases in accordance with Internal Revenue Code section 401(a)(17)(B). Effective only for the 1996 plan year, the rules of Internal Revenue Code section 414(q)(6) will apply in determining the annual compensation limitation, except that a member of the family group will include only the spouse of the *Member* and any lineal descendant of the *Member* who has not attained age nineteen before the close of the year.

If the annual compensation of a *Member* and his family members is so limited, the annual compensation of the *Member* and each such family member will be equal to the compensation of each such individual determined without regard to Internal Revenue Code sections 401(a)(17) and 414(q)(6) divided by such annual compensation for all such individuals as so determined and the quotient multiplied by the applicable Internal Revenue Code section 401(a)(17) limitation amount, as described above.

- (3) The annual compensation of each *Member* taken into account in determining benefits or contributions for any plan year beginning on or after July 1, 2002, or for any calendar year beginning on or after January 1, 2013, may not exceed \$200,000, as adjusted for cost of living increases in accordance with Internal Revenue Code section 401(a)(17)(B). For the period from July 1, 2012, to December 31, 2012, the applicable limit under Internal Revenue Code section 401(a)(17) shall be prorated as described in paragraph (e)(14) below.
- (4) For purposes of paragraphs (e)(1) through (e)(3), “annual compensation” means compensation during the plan year, or, effective on and after January 1, 2013, the calendar year, or such other consecutive twelve-month period over which compensation is otherwise determined under the *System* (the determination period). The cost of living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than twelve months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve. If the compensation for any prior determination period is taken into account in determining a *Member’s* contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

- (5) The limits referenced in paragraphs (e)(1) through (e)(4) above apply only to plan years beginning on or after July 1, 1996, and only to individuals who first become *Members* in plan years beginning on and after July 1, 1996. Individuals who become *Members* before plan years beginning on and after July 1, 1996, are not subject to the limits of Internal Revenue Code section 401(a)(17). Pursuant to section 13212(d)(3)(A) of OBRA '93, and the regulations issued under that section, the annual compensation in effect under Internal Revenue Code section 401(a)(17) does not apply to any such *Member* in any year.
- (f) Internal Revenue Code Section 401(a)(25): Effective July 1, 1989, SDCERS will determine the amount of any benefit that is determined on the basis of actuarial assumptions using assumptions adopted by the Board by Rule; such benefits will not be subject to employer discretion. The Board Rules adopted for this purpose are incorporated into the Article as part of the Plan document.
- (g) Internal Revenue Code Section 401(a)(31):
 - (1) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
 - (A) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income.

However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or to a qualified plan described in Internal Revenue Code Section 403(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

- (B) Eligible retirement plan: An eligible retirement plan is:
- (i) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan from the System,
 - (ii) an individual retirement account described in Internal Revenue Code Section 408(a),
 - (iii) an individual retirement annuity described in Internal Revenue Code Section 408(b),
 - (iv) an annuity plan described in Internal Revenue Code Section 403(a),

- (v) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b),
 - (vi) a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution, or
 - (vii) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.
 - (C) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p).
 - (D) Distributee: A distributee includes an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective January 1, 2007, it further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.
 - (E) Direct rollover: A direct rollover is a payment by the System to the eligible retirement plan specified by the distributee.
- (2) Effective January 1, 2006, in the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 24.0206 or Section 24.0306, if a Member does not elect to have such distribution paid directly to an eligible retirement plan specified by the Member in a direct rollover or to receive the distribution directly in accordance with Section 24.0206 or Section 24.0306, then the Board will pay the distribution in a direct rollover to an individual retirement plan designated by the Board.

(h) Internal Revenue Code Section 415:

- (1) Effective July 1, 1989, Member contributions paid to, and retirement benefits paid from, the System may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415. For purposes of applying these limits, the definition of compensation where applicable will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation provided, however, that the definition of compensation will exclude Member contributions picked up under Internal Revenue Code Section 414(h)(2), and for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Internal Revenue Code Section 125 or 457, and for plan years beginning on and after January 1, 2001, Internal Revenue Code Section 132(f)(4).
- (2) Before July 1, 1995, a Member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after July 1, 1995, a Member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).
- (3) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:
 - (A) before July 1, 2007, adjustments under Sections 24.1503, 24.1504, 24.1505, and 24.1506 will be taken into consideration when determining a Member's applicable Limit;
 - (B) on and after July 1, 2007, with respect to a Member who does not receive a portion of the Member's annual benefit in a lump sum:
 - (i) a Member's applicable Limit will be applied to the Member's annual benefit in the first limitation year without regard to any automatic cost of living increases under Section 24.1501;

- (ii) to the extent the Member's annual benefit equals or exceeds the Limit, the Member will no longer be eligible for cost of living increases under Section 24.1505 until such time as the benefit plus the accumulated increases under Section 24.1505 are less than the Limit; and
 - (iii) thereafter, in any subsequent limitation year, the Member's annual benefit including any automatic cost of living increase applicable under Section 24.1505 shall be tested under the then applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) and the regulations thereunder; and
- (C) On and after July 1, 2007, with respect to a Member who receives a portion of the Member's annual benefit in a lump sum, a Member's applicable Limit shall be applied taking into consideration automatic cost of living increases under Section 24.1501 as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and
- (D) On and after July 1, 2007, in no event will a Member's annual benefit payable under the System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations there under. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that takes into account the death benefits under the form of benefit:
 - (i) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the lesser of when adjusted in accordance with the following assumptions):

- (a) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant, or
- (b) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years before January 1, 2009, the applicable mortality tables described in Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code);

or

- (ii) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Section 415(b) limit applicable at the annuity starting date which is the least of when adjusted in accordance with the following assumptions):
 - (a) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

- (b) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and (i) for years before January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code);
or
- (c) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to July 1, 2007, using the rate in effect for the month prior to retirement, and on and after July 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and (i) for years before January 1, 2009, the applicable mortality tables for the distribution under Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 (prior to 2003) or Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Section 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Section 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

- (4) Notwithstanding any other provision of law to the contrary, the Board may modify a request by a Member to make a contribution to the System if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:
- (A) If the law requires a lump sum payment for the purchase of service credit, the Board may establish a periodic payment plan for the Member to avoid a contribution in excess of the limits under Internal Revenue Code Sections 415(c) or 415(n).
 - (B) If payment pursuant to subsection (h)(4)(A) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c), the Board may either reduce the Member's contribution to an amount within the limits of that section or refuse the Member's contribution.
 - (C) Effective for permissive service credit contributions made in years beginning after December 31, 1997, if a Member makes one or more contributions to purchase permissive service credit under the System, then the requirements of this section will be treated as met only if:
 - (i) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or
 - (ii) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c). For purposes of applying subparagraph (i) the System will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this paragraph (4), and for purposes of applying subparagraph (ii) the System will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this paragraph (4).
 - (D) For purposes of this paragraph (4) the term "permissive service credit" means service credit:

- (i) recognized by the System for purposes of calculating a Member's benefit under the System,
- (ii) which such Member has not received under the System, and
- (iii) which such Member may receive only by making a voluntary additional contribution, in an amount determined under the System, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in years beginning after December 31, 1997, permissive service credit may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit that a Member is receiving under the System.

- (E) The System will fail to meet the requirements of this paragraph (4) if:
 - (i) more than five years of nonqualified service credit are taken into account for purposes of this paragraph (4), or
 - (ii) any nonqualified service credit is taken into account under this paragraph (4) before the Member has at least five years of participation under the System.
- (F) For purposes of subparagraph (E), effective for permissive service credit contributions made in years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:
 - (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),

- (ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
- (iii) service as an employee of an association of employees who are described in clause (i), or
- (iv) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a Member to receive a retirement benefit for the same service under more than one plan.

- (G) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):
 - (i) the limitations of subparagraph (E) will not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (ii) the distribution rules applicable under federal law to the System will apply to such amounts and any benefits attributable to such amounts.
- (H) For an eligible Member, the limitation of Internal Revenue Code Section 415(c)(1) will not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the SDCERS as in effect on August 5, 1997. For purposes of this subparagraph (H), an eligible Member is an individual who first became a Member in SDCERS before July 1, 1998.

- (5) Effective January 1, 2009, the limitation year for purposes of Internal Revenue Code Section 415 is the calendar year beginning each January 1 and ending each December 31, with a short limitation year beginning July 1, 2008, and ending December 31, 2008. This is a change in the limitation year made pursuant to Treasury Regulation Section 1.415-2(b)(2) or successor regulation. The implementation of the change in the limitation year will be accomplished as required by Treasury Regulation Section 1.415-2(b)(4) or successor regulation.
- (6) Nothing contained in this section will limit the City Council from modifying benefits to the extent such modifications are permissible by the City Charter and applicable state and federal law.
- (i) Internal Revenue Code Section 503(b): Effective July 1, 1989, the Board may not engage in any transaction prohibited by Section 503(b) of the Internal Revenue Code.
- (j) Internal Revenue Code Sections 414(u) and 401(a)(37):
 - (1) Effective December 12, 1994, notwithstanding any other provision of retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994.
 - (2) To the extent required by Internal Revenue Code Section 401(a)(37), the survivors of a Member who dies on or after January 1, 2007 while performing qualified military service (as defined in chapter 43 of title 38, United States Code), are entitled to any additional benefits that the System would provide if the Member had resumed employment and then died, and the deceased Member's period of qualified military service will be counted for vesting purposes.
 - (3) Beginning January 1, 2009, to the extent required by Section 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (as defined under Section 3401(h)(2) of the Internal Revenue Code) from the City shall be treated as employed by the City, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

- (k) Internal Revenue Code Section 411(e): Effective July 1, 1989, in addition to any protection provided by this ordinance and California law:
- (1) A Member will be 100% vested in all Plan benefits upon attainment of the Plan's age and service requirements for the Plan's normal retirement benefit; and
 - (2) A Member will be 100% vested in all Plan benefits if the Plan is terminated or experiences a complete discontinuance of contributions.

(Amended 3-19-2001 by O-18930 N.S.)

(Renumbered from Section 24.1010 and amended 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)

(Amended 7-20-2012 by O-20182 N.S.; effective 8-19-2012.)

(Amended 5-2-2013 by O-20251 N.S.; effective 6-1-2013.)

§24.1005 Reciprocal Benefits with the Public Employees' Retirement System

(a) Reciprocity

For the purpose of expediting the conclusion of reciprocal agreements with the Public Employees' Retirement System ("PERS") or other public agencies maintaining independent retirement systems, and to avoid problems in interpretation that may arise from a great variation in reciprocal provision, the Board of Administration for PERS recommends the adoption of the reciprocal provisions set forth in paragraph (b) of this section into the retirement ordinances or plans of public agencies desiring to enter into a reciprocal agreement with PERS or other public agencies. In accordance with this recommendation, the Board of Administration for the City Employees Retirement System has adopted the Uniform Reciprocal provisions contained in paragraph (b) of this section.

(b) Uniform Reciprocal Provisions

The purpose of these reciprocal provisions is to extend to the members of other public agency retirement systems (hereinafter "reciprocal system") which adopt similar reciprocal provisions into their retirement ordinances or plans pursuant to Sections 20351, 20353, 31840.2 and 45310.5 of the Government Code, and who by contract agree to extend the benefits thereof to this System, the following rights in this System, provided such Member enters into employment under this System or the reciprocal System within six months of terminating his employment under such other or this System:

- (1) Notwithstanding any provisions of this plan or a reciprocal system plan in the matter of vesting, a member whose movement between systems occurs as herein specified shall have the right to elect to leave his accumulated contributions on deposit irrespective of the amount of such contributions or the length of service credited to him.
- (2) The age of entry for a person entering this system for purposes of fixing member contribution rates from a reciprocal system shall be his age at entry into such reciprocal system.
- (3) The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation earnable by a member of this system for purposes of computing final compensation for such member, provided he retires concurrently under both systems and is credited with such period of service under the reciprocal system at the time of retirement.
- (4) Service, solely for purposes of meeting minimum service qualifications for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a reciprocal system if the salary for such service constitutes compensation earnable by a member of this system.
- (5) A member shall be retired for disability and receive a retirement allowance based on the service credited to him at the time of retirement during any period in which he receives a disability retirement allowance under a reciprocal system; provided, that such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a nonindustrial disability if all the member's service had been credited under the reciprocal system; and provided further, that such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions, whether or not the disability is for industrial reasons.
- (6) The death benefit for a member who dies from nonindustrial causes as a member of a reciprocal system shall not exceed an amount which when added to the death benefit paid for such member under the reciprocal system equals the maximum death benefit payable under that system; provided, however, that such death benefit shall be at least the amount of the accumulated contributions; and, provided further, that if death is caused by industrial injury or disease in the reciprocal system the death benefit shall be the amount of the member's accumulated contributions.

- (7) The governing body of this system shall on the request of a reciprocal system supply information and data necessary for administration of such system as it is affected by membership in and service credited under this system.
- (8) Interpretation of these provisions shall be made with reference to interpretations that have been made relative to the Public Employees' Retirement System - 1937 Act County Employees' Retirement reciprocal provisions upon which they are based.
- (9) These provisions shall apply only to a member whose termination and entry into employment resulting in a change in membership from this system to such other system or from such other system to this system occurred after such acceptance by the Board after the effective date specified in the agreement; provided, however, that provisions relating to computation of final compensation shall apply to any other member is such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by a system's governing board.
- (10) Rights under this System shall be modified as necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in Section 20351 of the Government Code.

(Amended 11-10-1998 by O-18600 N.S.)

(Renumbered from Section 24.1011 on 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)

§24.1006 Retirement Allowance of Fixed Pension Retirees

Effective July 1, 1992, all special class safety members and their surviving spouses who are presently receiving a widow/widower's fixed pension pursuant to applicable provisions of this Retirement System shall have their fixed pensions raised to \$350.00 per month.

(Amended 7-12-1993 by O-17938 N.S.)

(Renumbered from Section 24.1012 on 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)

§24.1007 Early Retirement Incentive Program

(a) Definition

The Early Retirement Incentive Program is a program offering temporary incentives to eligible employees to encourage early retirement on a voluntary basis.

(b) Purposes

The Early Retirement Incentive Program has been established to address the severe budget constraints faced by The City of San Diego in Fiscal Year 1992–1993. The purposes of the Early Retirement Incentive Program are as follows:

- (1) To reduce expenditures for personnel employed by the City; and
- (2) To provide voluntary financial incentives to encourage eligible employees to retire earlier from employment and to minimize forced lay offs that would otherwise be required; and
- (3) To enable and encourage department heads to replace only where needed those employees eligible and electing to participate in Early Retirement Incentive Program in order to control the level of expenditures for personnel while maintaining the proper level of performance of duties.

(c) Eligibility

Any employee of The City of San Diego who is a general or safety member of the Retirement System who currently meets the following age and service requirements effective September 1, 1992, until January 4, 1993, will be eligible to participate in the Early Retirement Incentive Program:

- (1) General members with 10 or more years of creditable service who are age 62; or
- (2) General members with 20 or more years of creditable service who are age 55; or
- (3) General members enrolled prior to February 19, 1991, who are currently age 65 or over regardless of years of creditable service; or
- (4) Safety members with 10 or more years of creditable service who are age 55; or

- (5) Safety members with 20 or more years of creditable service who are age 50.

(d) Requirements

- (1) Participation in Early Retirement Incentive Program is wholly voluntary.
- (2) Any eligible employee who wishes to participate in Early Retirement Incentive Program shall submit a written application to the Retirement Administrator no later than January 4, 1993. All applications must be received at the Retirement office by 5:00 p.m., on January 4, 1993.
- (3) Any eligible employee electing to participate in Early Retirement Incentive Program shall retire no later than January 5, 1993.
- (4) Any eligible employee electing to participate in Early Retirement Incentive Program shall agree to select option 3 covering yearly installments to receive payment for accrued unused sick leave or annual leave set forth in Administrative Regulation No. 95.90, section 4.3a(3), of the Administrative Regulations Manual for The City of San Diego with the express modification that the first installment will be due on July 1, 1993 and subsequent installments due on July 1, 1994 and July 1, 1995.
- (5) Any increase to the unfunded liability of the Retirement System caused by the Early Retirement Incentive Program will be paid by The City of San Diego through an increase in the City's contribution rate to the Retirement System.

(e) Benefits

- (1) Eligible employees, other than those eligible employees age 65 or over with fewer than ten years of continuous service, electing to participate in the Early Retirement Incentive Program will receive an additional two years of service credit. Eligible employees age 65 or over with fewer than ten years of continuous service will receive additional service credit of up to two years to be determined in the proportion that their years of service bears to ten years of continuous service.
- (2) The additional service credit offered under Early Retirement Incentive Program will also be included in the calculations for the annual supplemental benefit described in SDMC section 24.0404.

- (3) The additional service credit offered under Early Retirement Incentive Program will also be included in the percentage calculations for the City-Sponsored Group Health Insurance for Eligible Retirees set forth in SDMC section 24.1204(b).

(f) Limitations

The early retirement benefits under this section will be limited by Section 415 of the Internal Revenue Code of 1986, as amended from time to time, and no early retirement benefits under this section will be effective if they have an adverse effect on the tax qualified status of the retirement system under Section 401 of the Internal Revenue Code of 1986, as amended from time to time.

*(“Early Retirement Incentive Program” added 11-2-1992 by O-17856 N.S.)
(Renumbered from Section 24.1013 on 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)*

§24.1008 Exemption from Process; Assignments Prohibited

The right of a person to a pension or Annuity or a retirement allowance, to the return of contributions, the pension, Annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this section and the moneys in the fund create under this section shall not be subject to execution, garnishment, attachment or any other process of any court except to the extent permitted by California Code of Civil Procedure section 704.110, and shall be unassignable except as in this section specifically provided.

*(“Exemption from Process; Assignments Prohibited” added 2-25-1997 by O-18383 N.S.)
(Renumbered from Section 24.1014 on 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)*

§24.1009 Presidential Leave Program Prohibited

The Presidential Leave Program previously agreed to and established by the City in Memoranda of Understanding and by Council Resolution is hereby terminated retroactively to its date of adoption, and the City will not re-establish the program in the future. No Member will be allowed to accrue Creditable Service, make contributions or include compensation as a result of employment with a labor organization.

(Added 4-28-2008 by O-19740 N.S.; effective 5-28-2008.)